

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	DIVISION ONE
)	
Respondent,)	No. 63562-0-I
)	
v.)	
)	
ROBERT L. WEBSTER,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: March 15, 2010
_____)	

Dwyer, A.C.J. — Where a trial court miscalculates a standard sentencing range, reversal and remand for resentencing is required. As the parties agree that the trial court miscalculated Richard Webster’s standard sentencing range, reversal of his sentence and remand for resentencing is required. Accordingly, we reverse and remand for resentencing. However, we find no merit in Webster’s contention that the current version of the DNA collection fee statute, RCW 43.43.7541, does not apply to him because it was not in effect at the time of the commission of his offenses. Our recent decision in State v. Brewster¹ is controlling on this issue. The trial court did not err by applying the current version of the statute in sentencing Webster.

I

By amended information, the State charged Webster with having

¹ 152 Wn. App. 856, 218 P.3d 249 (2009).

committed four felony offenses on September 30, 2006 against his girlfriend.² A jury convicted Webster of all four counts. On April 3, 2007, the trial court entered final judgment and sentence on three of the four counts, treating each as a felony. In doing so, the trial court exercised its discretion to waive the \$100 fee for the collection of a DNA sample that otherwise would have been assessed against Webster. The version of RCW 43.43.7541 applicable at the time of the offenses and at sentencing authorized the trial court to waive the collection fee.³

Webster subsequently appealed from his judgment and sentence, contending that he was erroneously convicted of felony violation of a court order and that the calculation of his offender score was correspondingly incorrect. The State conceded that the conviction was improper. We vacated Webster's conviction of felony violation of a court order and remanded for the entry of judgment on a misdemeanor violation of court order and resentencing in light of a recalculated offender score.

On remand, the trial court recalculated Webster's offender score and the applicable standard sentencing range for each count. For the offense of

² Webster was charged with and convicted of (1) one count of attempted murder in the first degree-domestic violence, in violation of RCW 9A.28.020, 9A.32.030(1)(a); (2) one count of assault in the first degree-domestic violence, in violation of RCW 9A.36.011(1)(a); (3) one count of domestic violence felony violation of a court order, in violation of RCW 26.50.110(1), (4); and (4) one count of felony harassment-domestic violence, in violation of RCW 9A.46.020(1), (2).

³ The applicable statute provided, in relevant part:

Every sentence imposed under chapter 9.94A RCW, for a felony specified in RCW 43.43.754 that is committed on or after July 1, 2002, must include a fee of one hundred dollars for collection of a biological sample as required under RCW 43.43.754, *unless the court finds that imposing the fee would result in undue hardship on the offender.*

Former RCW 43.43.7541 (2006) (emphasis added).

attempted murder in the first degree, the trial court calculated the standard sentencing range of imprisonment for the offense of murder in the first degree as being from 312 to 416 months. The trial court then multiplied that range by 75 percent to account for Webster's conviction of an attempt offense and concluded that the applicable standard sentencing range was from 234 to 314.25 months. At the sentencing hearing, the trial court stated that it would "impose the top end" of the standard range. Webster was sentenced to 314.25 months of imprisonment.

In addition, Webster was required on resentencing to pay a \$100 fee for the collection of a DNA sample. In 2008, the Washington legislature amended RCW 43.43.7541, eliminating the trial court's discretion to waive the collection fee.⁴ See RCW 43.43.7541 (2008). Webster now appeals.

II

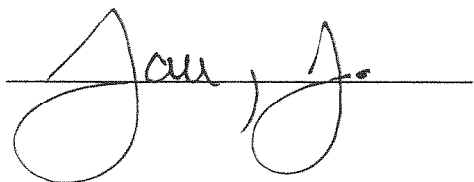
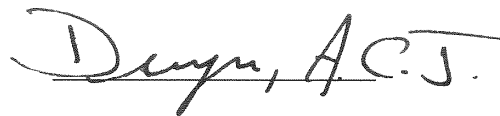
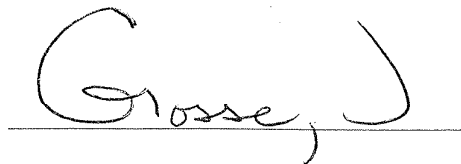
First, Webster first contends that the trial court miscalculated the standard sentencing range on resentencing. The State concedes that the judgment and sentence contains a mathematical error. The parties agree that, using the recalculated offender score, the standard range of imprisonment is from 234 to 312 months. Without citing to any authority, the State urges remand for the entry of an amended judgment and sentence of 312 months. Although the trial court indicated at the sentencing hearing that it intended to sentence Webster to

⁴ The current version of the statute reads, in pertinent part: "Every sentence imposed under chapter 9.94A RCW for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars." RCW 43.43.7541, as amended by Laws of 2008, ch. 97, § 3.

the top end of the standard range, the miscalculation of the standard range is not a scrivener's error. Because the standard sentencing range was miscalculated, reversal and remand for resentencing is required. In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 876, 50 P.3d 618 (2002).

Second, Webster argues for various reasons that the recent amendment to RCW 43.43.7541 eliminating the trial court's discretion to waive the DNA collection fee does not apply to him because it was not in effect at the time he committed the offenses for which he was convicted. Webster is incorrect. We recently addressed these same arguments in State v. Brewster, 152 Wn. App. 856, 218 P.3d 249 (2009). There, we held that the trial court correctly applied the current version of the DNA collection fee statute to Brewster's sentence even though the current law was passed after the commission of Brewster's offenses. Brewster, 152 Wn. App. at 861. As the contentions raised on appeal in Brewster parallel those raised by Webster in this case, see 152 Wn. App. at 860-62, our reasoning in Brewster applies in this case and is controlling. The trial court committed no error in applying the current version of RCW 43.43.7541.

Reversed and remanded.

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We concur: